IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.271/2006

Sh.Sandeep Maan ..... Appellant
! through: Mr.S.N.Parashar, Adv.

VERSUS

$ M/s.Ithad Motor Transport (P) Ltd. ..... Respondent
^ through: Mr.Mohan Babu Aggarwal, Adv.

MAC. APP. No.285/2006

Sh.Sumeet Maan ..... Appellant
! through: Mr.S.N.Parashar, Adv.

VERSUS

$ M/s.Ithad Motor Transport (P) Ltd. ..... Respondent
^ through: Mr.Mohan Babu Aggarwal, Adv.

RESERVED ON : 13-02-2007

% **D**ATE OF DECISION : 14-02-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.
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1. Sumeet Maan and Sandeep Maan are brothers. On 9.7.2003 Sandeep Maan was driving a motorcycle bearing No. DL-8SW-5415. Sumeet was the pillion rider.

2. When they reached old G.T.Road, a bus bearing No. DL-1PA-0363 hit the motorcycle. Both brothers suffered injuries. Both had to be hospitalized.

3. Since the two brothers are dissatisfied with the claims granted to them by the learned Tribunal, I need to note the facts which are relevant to assess a fair compensation to be paid to the two brothers.

4. Sandeep has been awarded a total compensation of Rs.2,20,024/-. The break up is as under:-

(a)	Medical reimbursement	.....	Rs.1,75,024/-
(b)	Loss of earnings	.....	Rs. 15,000/-
(c)	Towards pain and suffering	.....	Rs. 10,000/-
(d)	Special diet and conveyance charges	....	Rs. 20,000/-

5. Sumeet has been awarded a compensation in sum of Rs.1,55,876/-. The break up is as under:-

(a)	Medical reimbursement	....	Rs.1,17,126/-
(b)	Loss of earnings	....	Rs. 8,750/-
(c)	Towards pain and suffering	....	Rs. 10,000/-
(d)	Special diet and conveyance charges	....	Rs. 20,000/-

6. In respect of medical costs reimbursed to the two brothers, learned counsel for the appellant made a vague

attempt to urge that complete reimbursement has not been effected.

7. However, the argument was abandoned mid way for the reason, it was noted that certain bills were highly doubtful.

8. Learned counsel fairly conceded that in view of testimony of PW-3, the so-called bills which were typed on the letter head of Sant Parmanand Hospital, Shyam Nath Marg were rightly ignored by the Tribunal.

9. Learned counsel thus, restricted his submissions under only two heads.

10. Firstly, counsel urged that reimbursement for loss of wages was inadequate. Secondly, amounts paid towards pain and suffering was stated to be inadequate.

11. Qua Sandeep Maan, counsel urged that evidence establishes that he was hospitalized thrice. Firstly from 9.7.2003 to 19.7.2003. Secondly, for 7 days in the month of September 2003 and lastly for 5 days in the months of May 2004. Pertaining to Sumeet, counsel urged that Sumeet was hospitalized for 10 days.

12. It was urged that both brothers suffered extensive fractures and ever after discharge from hospital had to undergo physiotherapy. They remained out of circulation for a long

time. Counsel submitted that Sandeep who was undergoing a diploma course in public sanitation lost one year. As regards Sumeet, counsel urged that he remained unemployed for nearly a year.

13. Sandeep has been recompensed Rs.15,000/- for loss of one academic year. Sumeet has been paid Rs.8,750/- as notional loss of wages for 7 months unemployment.

14. I do not find compensation assessed under this head to both appellants as inadequate for the reason, due to losing one academic year Sandeep would lose one year of gainful employment.

15. Learned Tribunal has awarded the loss of annual wages specified in the 2nd Schedule to the MV Act 1988.

16. I questioned learned counsel for the appellants whether the two brothers have since gained any employment. The answer was no.

17. As regards Sumeet, noting that his injuries would have kept him immobile for 7 months he has been recompensed 7 month notional wages. I find no infirmity in the award in so far Sumeet has been recompensed loss of earning.

18. Both brothers have been awarded Rs.10,000/- each for pain and suffering.

19. Sandeep's injuries are much graver. He had to be

hospitalized thrice for 10, 7 and 5 days respectively.

20. Sumeet had to be hospitalized only once for 10 days.

21. Injuries suffered by Sandeep are compound fractures of the right femur bone, head injuries and injuries on the right hand. Injuries suffered by Sumeet are fracture of the jaw, wrist and right leg.

22. Both brothers had to be operated, but Sandeep had to be operated thrice. The operation on Sandeep show that the femur bone was having a problem in healing.

23. Surely, both brothers did not suffer same degree of pain and agony. Sandeep's pain and agony is much more.

24. Compensation to be assessed for pain and agony is a vexed issue as hardly any objective criteria can be crystallized. Estimation of pain and suffering is bound to be highly subjected. But, gravity of the injuries would be reflective of the intense pain felt by the body. Further, duration of hospitalization would also indicate the pain and suffering.

25. Total hospitalization suffered by Sandeep on the three occasions is approximately 22 days. Thrice, surgery had to be performed. Every surgery would be a painful experience. The bones were not healing. It is reflective of the damage suffered by the bones.

26. Rs.10,000/- awarded to Sandeep towards pain and

suffering is highly inadequate.

27. In the report published as 2006 ACJ 1398 *Oriental Insurance Co. Vs. R.Swaminathan & Ors.*, for pain and suffering undergone in respect of injuries which resulted in the amputation of the right hand, compensation of Rs.1 lac was upheld by the Supreme Court.

28. Taking guidance therefrom, for pain and suffering of Sandeep, Rs.50,000/- would be a fair compensation.

29. For Sumeet, noting that his hospitalization was for 10 days and surgery had to be performed to straighten the broken bones and thereafter a rod had to be inserted, a fair and just compensation of Rs.25,000/- would suffice.

30. The appeals stand disposed of enhancing the sum awarded to Sandeep by further sum of Rs.40,000/- and to Sumeet, enhancing the compensation by further sum of Rs.15,000/-.

31. Both brothers would be paid the enhanced compensation with interest @ 6% per annum from date of the claim petition till date of realization.

32. No costs.

February 14, 2007 **PRADEEP NANDRAJOG, J.**
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For orders, see MAC. APP. No.271/2006.

February 14, 2007 **PRADEEP NANDRAJOG, J.**
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